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Ex-Partner at Milberg Pleads Guilty to Conspiracy

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A seven-year federal investigation into accusations that a leading securities class-action law firm, Milberg Weiss, paid secret kickbacks to plaintiffs gained traction yesterday when David J. Bershad, a former partner with extensive knowledge of the firm's finances, pleaded guilty to conspiracy and agreed to cooperate with prosecutors.

Mr. Bershad's guilty plea is the latest blow to a powerhouse firm that once dominated the landscape for class-action securities lawsuits and spurred fear as well as contempt in corporate boardrooms. But over the last year, the firm has struggled to retain its major clients, its lawyers and its hold on numerous lawsuits even as the number of securities-related cases has declined, in part because of the strong performance of the stock market.

Yesterday's guilty plea also put renewed pressure on William S. Lerach and Melvyn I. Weiss, two of the industry's leading lawyers who founded the New York-based law firm and have long been the focus of the federal investigation. Mr. Lerach split from Milberg Weiss in 2004 to form a firm in San Diego, and last month, he announced that he was considering retirement. Neither Mr. Lerach nor Mr. Weiss has been indicted. Calls to their lawyers were not returned.

"We are in a situation where there will undoubtedly be tremendous pressure on others under investigation because the government doesn't give out plea bargains lightly," said Mark Zauderer, a trial lawyer with Flemming Zulack Williamson Zauderer in New York who specializes in white-collar cases, who is not involved in the case.

Mr. Bershad was indicted last year along with the law firm and another named partner, Steven G. Schulman.

The 20-count indictment, which included conspiracy and other charges, detailed a scheme that began in the 1970s and continued as recently as 2005. In that scheme, lawyers inside Milberg Weiss paid \$11 million in "secret and illegal kickbacks" to named plaintiffs in more than 150 class-action and other shareholder lawsuits. The lawsuits, according to the indictment, earned the firm more than \$216 million.

Lawyers from Milberg Weiss have also had settlement talks with prosecutors. Recently, those discussions have centered largely on what sort of monetary penalty the firm's remaining partners will have to pay, according to a person briefed on the talks but unauthorized to speak for attribution.

Like other plaintiffs firms, Milberg Weiss does not have a large cash pool to pay a significant fine. Instead, individual partners would have to put the cash up themselves.

Yesterday, the firm changed its name from Milberg Weiss & Bershad to simply

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Milberg Weiss and said that Mr. Bershad, who had been on a leave of absence, had been terminated.

"We remain confident that his actions will have no effect on the firm's commitment to its clients and its ongoing work to protect public shareholders and consumers," the firm said in a statement.

Hired in 1968, Mr. Bershad, 67, of Montclair, N.J., is the first Milberg partner to plead guilty in the investigation and is a critical witness to prosecutors because he has intimate knowledge of the firm's finances, several people briefed on the investigation said.

In pleading guilty in Federal District Court in Los Angeles to one count of conspiracy, Mr. Bershad also agreed to give back \$7.75 million, pay a \$250,000 fine, and cooperate in the government's investigation of other participants in the conspiracy, prosecutors said.

The conspiracy charge carries a maximum penalty of five years in prison, although it is unclear what, if any, jail time he will serve. A sentencing hearing was scheduled for June 23, 2008.

"David Bershad is committed to making amends for what he has done," his lawyer, Robert Luskin, said in a statement. "His efforts to right these wrongs, together with his many good works throughout his career, should be remembered along with the offense he admitted today."

Yet, in court documents, Mr. Bershad details how from the 1970s through 2005 he and other lawyers at Milberg Weiss recruited and retained named plaintiffs by secretly paying them a portion of the legal fees, generally 10 percent, that the firm obtained.

By having a stable of paid plaintiffs on hand, Milberg Weiss was able to file more class-action lawsuits and do so more quickly than competing firms, Mr. Bershad said in the documents. That enabled the firm to obtain lead counsel status in cases more often and a larger share of the legal fees, his statement said.

It is illegal for a plaintiff in a lawsuit to receive a portion of the legal fees because lead plaintiffs in class actions cannot have incentives that might persuade them to enter into a settlement that may not be the best for the class.

In the early years of the conspiracy, Mr. Bershad said in court documents, a number of the partners involved pooled their personal cash into a fund that he maintained in his office, and which was then doled out to pay plaintiffs.

Mr. Bershad said in the documents that he kept track of the amounts contributed and the secret payments that were made. Later, according to the documents, the partners involved arranged to have the firm award them "bonuses" that equaled the amounts of cash they had contributed to the fund. That allowed them to "use Milberg Weiss profits to compensate themselves for the cash they had contributed to the secret payment fund," Mr. Bershad said in court filings.

The partners at the firm who agreed to the secret payments included himself, Mr. Schulman, who has vowed to fight the charges and is scheduled to go on trial in January, as well as numerous unnamed partners, including "Partner A" and "Partner B," according to the plea agreement. People briefed on the investigation say Partner A and Partner B are Mr. Weiss and Mr. Lerach.

A call to Mr. Schulman's lawyer was not returned. Mr. Bershad also named individuals who served as lead plaintiffs and accepted payments from the firm, including Steven G. Cooperman, who is expected to plead guilty today to conspiracy and is cooperating with the investigation, according to prosecutors.

Last year, two others also entered guilty pleas in the case. A former Milberg Weiss plaintiff, Howard J. Vogel, pleaded guilty to making a false declaration to a

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court in connection with secret payments he had received.

And a Los Angeles lawyer, Richard R. Purtich, pleaded guilty to a tax charge related to claims that he had funneled money to a client of the firm. Mr. Purtich did not work at Milberg Weiss.

Photo: David J. Bershad pleaded guilty and agreed to help the government's inquiry. (Photograph by Joe Tabacca/Bloomberg News)

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